

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT DEAN HEAGY,

Petitioner,

v.

WASHINGTON STATE
PENITENTIARY,

Respondent.

No. C12-5965 RBL/KLS

ORDER DECLINING SERVICE AND
GRANTING LEAVE TO AMEND

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. On November 7, 2012, Petitioner Robert Dean Heagy filed a Petition for Writ of Habeas Corpus. ECF No. 8. The Court will not direct that the petition be served, however, as it appears to be deficient.

In his petition, Mr. Heagy seeks to challenge a 2006 conviction. ECF No. 8. Although he indicates that he filed an appeal with the Washington Court of Appeals, he does not indicate that he sought review by the Washington Supreme Court. Mr. Heagy is advised that he may pursue federal habeas relief only *after* he has exhausted his state judicial remedies. *See Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1).

A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS - 1

1 *Picard v. Connor*, 404 U.S. 270, 276 (1971); *Middleton v. Cupp*, 768 F.2d 1083, 1086 (9th Cir.
2 1985). Full and fair presentation of claims to the state court requires “full factual development”
3 of the claims in that forum. *Kenney v. Tamayo-Reyes*, 504 U.S. 1, 8 (1992).

4 In addition, Mr. Heagy has filed a petition for writ of habeas corpus naming the
5 Washington State Penitentiary as Respondent. ECF No. 5. The proper respondent to a habeas
6 petition is the “person who has custody over [the petitioner].” 28 U.S.C. § 2242; see also §
7 2243; *Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d
8 244, 249 (9th Cir. 1989). According to his petition, Mr. Heagy is currently confined at the
9 Washington State Penitentiary in Walla Walla, Washington. The Superintendent of the
10 Washington State Penitentiary is Stephen D. Sinclair.

12 Accordingly, the Court shall not serve the petition. Mr. Heagy shall file by no later than
13 **January 25, 2013**, an amended petition under 28 U.S.C. § 2254 showing that his grounds for
14 federal relief have been properly exhausted in state court or show cause why this matter should
15 not be dismissed. The Clerk shall send a copy of this Order to Mr. Heagy and the Court’s form
16 petition for 28 U.S.C. § 2254 petitions.

18
19 **DATED** this 6th day of December, 2012.

20
21
22 
23 Karen L. Strombom
24 United States Magistrate Judge
25
26